

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	CG Docket No. 02-278
)	
Rules and Regulations Implementing)	
)	
the Telephone Consumer Protection)	
)	
Act of 1991)	

**OPPOSITION TO PETITION FOR STAY
OF THE NATIONAL ASSOCIATION OF BUSINESS
POLITICAL ACTION COMMITTEES**

I respectfully submit this reply to the National Association of Business Political Action Committees ("NABPAC") Petition for Stay in regard to the Commission's reversal on the Existing Business Relationship ("EBR") dealing with facsimile transmissions. [In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, FCC Rcd., 03-153 (F.C.C. Jul 03, 2003), 68 FR 44144-01.]

In the June 26th adoption of the Commission Report and Order the Commission reversed its earlier opinions that a prior EBR constitutes prior express consent to receive facsimile transmissions. Such a reversal is appropriate given the plain language of the statute, the intent of Congress and the unanimous decisions handed down by the courts that have addressed this issue¹.

NABPAC's petition incorrectly claims that the Commissions reversal of its opinion is a new rule. There is no new rule! There has never been an EBR exemption in the United States Code or Code of Federal Regulations. The Commission erroneously issued an opinion that an EBR equated to prior express consent. The Commission has rightfully corrected itself and reversed its opinion.

Additionally, NABPAC's petition incorrectly claims that a stay is merited under the First Amendment. The First Amendment does not grant the right to anyone to commandeer someone else's private property for political or other purposes.

In that light it is only prudent that everyone obtain permission by signature and telephone number prior to transmitting an unsolicited facsimile whether for commercial or political purposes. Asking for permission during an initial contact with someone does not take that much more time or any extra record keeping.

¹ See comments of Kondos & Kondos Law Offices, John Holcomb Esq. and Robert Biggerstaff

In conclusion, there is no exemption in the TCPA for an EBR. It is not labor intensive or burdensome to obtain the signature authorization and telephone number prior to transmitting an unsolicited facsimile for commercial or political purposes. It is not only the proper thing to do but it will also help those entities engaged in legitimate activities from violating a federal consumer protection law. A stay as requested by NABPAC is not in the best interests of the general public and will harm the general public. As such the Commission has made the proper determination in its ruling adopted June 26th, 2003 and I respectfully request that NABPAC's request for a stay be denied.

Respectfully submitted,

_____/s/_____

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